IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7321 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UMAR SIDIQ KUMBHAR

Versus

STATE OF GUJARAT

Appearance: 1. Special Civil Application No. 7321 of 1993
MR MH BAREJIA for Petitioner No. 1 (absent)
MR HD DAVE AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE SHARAD D.DAVE

Date of decision: 25/11/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

This is a petition of 1993, which is listed today for the 18th time. At least on last four occasions this matter was placed before this very Bench, but the same

had to be adjourned on one or the other grounds. Last time i.e. on 24.9.2004 Mr.Barejia requested to adjourn the matter as he had to inform the petitioner by way of registered letter about the hearing of this petition. In ordinary circumstances, we would have refused that request of Mr.Barejia, but on that day i.e. on 24.9.2004 learned AGP, Mr.Bhatt also wanted instructions in the matter as no reply affidavit is filed in the petition. It may be stated that it was submitted by Mr.Bhatt, learned AGP before us on 24.9.2004 that the petition filed by the petitioner was not maintainable as he had already availed of alternative remedy of suit before the Trial Court where he failed to obtain interim relief. Therefore, he filed appeal before the District Court and having failed to obtain any order he withdrew the said appeal and thereafter approached this court by way of this petition.

Sufficient opportunities were given to Mr.Barejia to take necessary instructions from the petitioner. Today he has not remained present when the matter is called out. There is neither sick note nor leave note of Mr.Barejia for the petitioner today. Under the circumstances, it would not be proper for this court to decide the matter on merits and this court is left with only option to dismiss the same in absence of the learned counsel for the petitioner. Accordingly, this petition is dismissed for default. Rule is discharged. Interim relief granted earlier stands vacated forthwith. No order as to costs.

(B.J.Shethna, J.)

(Sharad D. Dave, J.)

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